

LITTLE  
ROCK,  
July, 1838.  
PHILLIPS  
vs.  
HICKS.

DANIEL PHILLIPS *against* ARTHUR HICKS, ADM'R.

APPEAL *from Crawford Circuit Court.*

The same decision made in this case as to proving the hand-writing of the attesting witness to a bill of sale, and as to the incompetency of a distributee to testify, as in the case of Brown, executor, *vs.* Hicks, administrator, reported at page 232.

This was an action of detinue for a slave, brought in the court below by *Arthur Hicks*, administrator, &c. of John Phillips, dec'd, against *Daniel Phillips*. The declaration was in the common form, with one count. The pleadings and issues were the same as in the case of *Hicks*, adm'r of Phillips in the court below against Brown, executor of Phillips, reported at page 232. On the trial the same bill of sale from Ellender Phillips, to Thomas Phillips, was admitted in evidence on the same showing as in that case, and Samuel Phillips admitted to testify under the same circumstances, and a verdict was rendered against the defendant for the slave, or his value—from which judgment the defendant appealed.

TAYLOR, for the appellant:

WALKER and FOWLER, *contra*:

LACY, *Judge*, delivered the opinion of the court: This is an action of detinue for the recovery of a slave. The declaration contains but one count, which is in the ordinary form, as on a case of bailment.—The defendant put in two pleas to the action: The first, a plea of non-detinet, and secondly the plea of the statute of limitations. Issues were formed on both pleas, and on the trial, the plaintiff, in order to support his cause of action, read in evidence a bill of sale from Ellender Phillips to Thomas Phillips, of the slave in controversy under which the defendant claimed. He also called Samuel Phillips as witness, who was sworn and permitted to give testimony in the cause. The defendant objected to the bill of sale, and to the competency of Samuel Phillips, but the court overruled the objection, and suffered the testimony to be received as evidence. Whereupon, the jury found a verdict for the plaintiff, and the court pronounced judgment

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in his favor. The defendant then prayed an appeal, which was granted him.

The only questions presented for the court to determine, were decided in the case of *Richard C. S. Brown*, executor of *Thomas Phillips*, dec'd, against *Arthur Hicks*, administrator of *John Phillips*, dec'd, during the present term. And as the assignment of errors raises but two points, and as both these were directly settled against the plaintiff in the case above referred to, and the reasons and authorities are there given at length, we deem it unnecessary to enter again into the examination of the questions, and we shall therefore content ourselves with simply pronouncing judgment in this case, and giving the proper instructions to the court below.

The opinion of the Circuit Court in permitting the testimony of *Samuel Phillips*, and the bill of sale from *Ellender Phillips*, to be read in evidence upon the trial, was evidently erroneous; and the decision is, therefore, reversed. The judgment of the court below must be set aside with costs, the cause remanded to be proceeded in agreeably to the opinion here delivered, a new trial awarded, and leave given to the parties to amend their pleadings if desired.